

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2473 OF 2025

Maharashtra State Electricity

Distribution Company Ltd.

... Petitioner

Versus

Rahul Vijay Joshi

... Respondent

Mr. Suresh Pakale, Senior Advocate *a/w Mr. Sumeet Palsuledesai i/b M. V. Kini & Co. & Mohammed Oomkar Shaikh, for the Petitioner.*

Mr. Y. M. Pendse, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 28 APRIL 2025.

P.C. :

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and disposal.

2) The Petition challenges judgment and order dated 18 November 2024 passed by the Member Industrial Court, Nashik allowing Complaint (ULP) No. 56 of 2019 filed by the Respondent. The Industrial Court has set aside Respondent's posting order dated 3 September 2019 and has further directed the Petitioner to transfer the Respondent within Nashik Zone by taking note of the fact that

he is transferable within Sub Division, Nashik till the end of the year 2027 as per the transfer policy of the Petitioner.

3) I have heard Mr. Pakale, the learned senior advocate appearing for the Petitioner and Mr. Pendse, the learned counsel appearing for Respondent. I have gone through the findings recorded by the Industrial Court in the impugned judgment and order as well as the other documents produced alongwith the Petition and with compilation of documents.

4) It appears that the Respondent was functioning as Upper Division Clerk (Accounts) with the Petitioner. There was some pending litigation on the issue of reservations in promotion. The Petitioner decided to effect *ad hoc* promotions during pendency of the said litigation. Accordingly, order dated 22 August 2019 was issued, by which several Upper Division Clerks (Accounts) were promoted as Assistant Accountant on *ad hoc* basis. Order dated 22 August 2019 indicated '*Present Place/Zone of Working*' and '*Place/Zone of Posting/Allotment on Promotion*'. Name of the Respondent was included at Serial No. 259 in the order dated 22 August 2019, by which he was shown to have been posted as Assistant Accountant at 'Nashik Zone'. It appears that in pursuance of the promotion and posting order dated 22 August 2019, the Assistant General Manager (HR) of Nashik Zone issued detailed posting Order No. 38378 dated 3 September 2019, by which the Respondent was transferred on promotion to Parner Sub-Division within Nashik Zone. Respondent got aggrieved by his posting at Parner Sub-Division and instituted Complaint (ULP) No. 56 of 2019 before the Industrial Court, Nashik. By interim order dated 30 December 2019, the Industrial Court directed the Petitioner to

consider the request of the Respondent for modification of his transfer order on the ground of his medical certificate and for his transfer at an appropriate place considering his medical condition. It is common ground that towards implementation of the interim order dated 30 December 2019, the Petitioner has posted the Respondent at Malegaon Circle during pendency of Complaint (ULP) No.56 of 2019, where he continues to work till date.

5) By judgment and order dated 18 November 2024, the Industrial Court has allowed the Complaint filed by the Respondent by setting aside the transfer order dated 3 September 2019 with direction to the Petitioner to transfer the Respondent within Nashik Zone by declaring that his job is transferable within Sub-Division Nashik till the end of year 2027.

6) In my view, the Industrial Court has completely misdirected itself by placing reliance on the provisions of the Transfer Guidelines 2015, which essentially deal with transfers on rotational basis. The tenure specified in the Transfer Guidelines essentially relate to rotation of staff from time to time. What is effected in the present case is not routine transfer on account of completion of specified tenure on a post. Respondent came to be promoted from the post of Upper Division Clerk (Accounts) to the post of Assistant Accountant by order dated 22 August 2019. There was no dispute to the position that there was upward movement in respect of the Respondent from Pay Group-3 (seniority at Circle Level) To Pay Group-3 (seniority at State Level) on account of promotion order dated 22 August 2019. Clause 2 (τ) of the transfer guidelines 2025 deals with posting on promotions and provides thus:

ट) वेतनगट २ व ३ मधील राज्यस्तरीय सेवाज्येष्ठतेमधील कर्मचाऱ्यांना पदोन्नती किंवा सरळसेवा भरतीअंतर्गत पदस्थापना/नियुक्ती रिक्त पदाच्या उपलब्धतेनुसार शक्यतो कार्यरत असलेल्या परिमंडळामध्ये देण्यात येईल. तथापि, ज्यांची यापूर्वी परिमंडळाबाहेर पदस्थापना बदली करण्यात आलेली आहे अशा कर्मचाऱ्यांचे विनंती बदली अर्ज, अशी विनंती बदली करण्यास सक्षम असलेल्या समितीमार्फत आगामी बैठकीमध्ये विचारात घेण्यात येतील.

7) Thus, a special provision is made under Clause 2 (ट) of the transfer guidelines under which a person promoted within Pay Groups 2 and 3 at state level seniority can be posted as far as possible within the same zone. Beyond posting within the same zone, no further protection is provided to employees promoted in pay group 2 and 3 at state level seniority. The present case would be governed by Clause 2 (ट) of the transfer guidelines under which the Respondent could be posted at any post within the zone upon his promotion as Assistant Accountant. The Tribunal has not even bothered to take into consideration provisions of Clause 2 (ट) the Guidelines 2015 and has erroneously proceeded on an assumption that Respondent was subjected to a routine transfer. The Industrial Court has completely misdirected itself in not appreciating the position that Respondent was posted on promotion and therefore the normal guidelines relating to rotational transfers did not apply to him. While rotational transfers need to be effected on completion of specified years of service, posting on promotion can be done at any point of time. Similarly, while the date of 31st May of each year is specified for effecting rotational transfers, no such date is applied when an employee is to be posted on promotion as such promotion order can be issued at any point of time in a year. Once promotion occurs, the promoted employee needs to be posted at an appropriate place. Beyond the provisions of Clause 2 (ट) in the transfer guidelines 2015, there is no further protection available to the Respondent for being posted on his promotion as Assistant

Accountant. There is no dispute to the position that his posting as Assistant Accountant at Parner Division is within Nashik Zone. Thus there is due adherence to the provisions of Clause 2 (C) Transfer Guidelines 2015.

8) In my view, therefore, the Industrial Court has committed a jurisdictional error in allowing the Complaint filed by the Respondent, its order is unsustainable and liable to be set aside.

9) It however appears that on account of interim order passed by the Industrial Court on 30 December 2019 directing consideration of request of the Respondent for modification of transfer order during pendency of the complaint, the Respondent has been posted at Malegaon Circle. It is contended by Mr. Pendse that the Respondent has now completed his tenure of posting at Malegaon Circle and in fact is due to be transferred out. On the other hand, it is contention of Mr. Pakale that services of the Respondent are required at Parner Sub-Division. In my view, this aspect needs to be considered by the transferring authority. Therefore, though the impugned order passed by the Industrial Court on 18 November 2024 is being set aside, the Petitioner shall take a fresh decision about posting of the Respondent as Assistant Accountant depending on the current prevailing situation, for which Respondent would be at liberty to make a representation.

10) The Petition succeeds accordingly, and I proceed to pass the following order:

i) Judgment and order dated 18 November 2024 passed by the Member, Industrial Court, Nashik in Complaint (ULP) No. 56 of 2019 is set aside.

ii) The Petitioner shall issue fresh order of posting of the Respondent depending on the current prevailing situation, for which the Respondent would be at liberty to make an appropriate representation to the Petitioner.

11) With the above direction, the Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]